

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

NICHOLAS DAYTER,

Plaintiff,

vs.

**1:22-CV-1246
(TJM/TWD)**

DANIELLE PLOOF,

Defendant.

**Thomas J. McAvoy,
Sr. U.S. District Judge**

DECISION & ORDER

The Court referred this *pro se* civil action, brought pursuant to 42 U.S.C. § 1983 and New York law, to Magistrate Judge Thérèse Wiley Dancks for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). Plaintiff Nicholas Dayter alleges that Defendant Danielle Ploof libeled him, in part by posting statements on social media that placed him in danger. Plaintiff contends that these statements violated his First Amendment rights and entitle him to damages under state law.

As Plaintiff sought leave to proceed *in forma pauperis*, Judge Dancks gave the Complaint an initial review. Judge Dancks's Report-Recommendation, dkt. # 7, issued on December 19, 2022, recommends that the Court dismiss the Complaint for failure to state a claim without prejudice to refiling. Judge Dancks finds that Plaintiff has failed to allege

that Defendant was a state actor, and therefore cannot maintain a Section 1983 claim. Judge Dancks also finds that Plaintiff has failed to allege facts sufficient to demonstrate diversity jurisdiction. In addition, Judge Dancks concludes, Plaintiff has failed to allege a defamation claim because he has not identified any particular defamatory statement.

Plaintiff has not objected to the Report-Recommendation, and the time for such objections has passed. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice and the Court will accept and adopt the Report-Recommendation for the reasons stated therein.¹

The Report-Recommendation of Magistrate Judge Dancks, dkt. # 7 is hereby **ACCEPTED** and **ADOPTED**. Plaintiff's Complaint, dkt. # 1, is hereby **DISMISSED WITHOUT PREJUDICE AND WITH LEAVE TO AMEND**. Plaintiff shall file his Amended Complaint within 30 days of the date of this Order. Failure to file an Amended Complaint within the allotted time will cause the Clerk of Court to close the case without further notice.

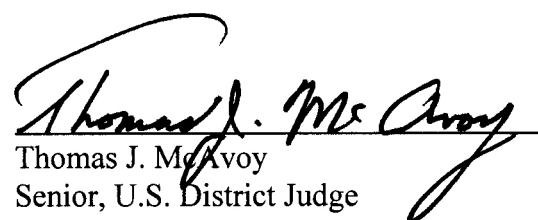
PLAINTIFF IS REMINDED THAT NO PORTION OF HIS PRIOR COMPLAINT SHALL BE INCORPORATED BY REFERENCE INTO HIS AMENDED COMPLAINT. ANY AMENDED COMPLAINT SUBMITTED BY PLAINTIFF MUST SET FORTH ALL OF THE CLAIMS HE INTENDS TO ASSERT AGAINST THE DEFENDANT AND MUST

¹The Court notes, as Judge Dancks did, that mail sent to the address Plaintiff provided has been returned undeliverable. See dkt. #s 6, 8-9. As Judge Dancks pointed out, a pro se litigant has a duty under the Local Rules to keep the court informed of any change of address. See L.R. 10.1(c)(2). Plaintiff shall keep the Court updated on his current address or face dismissal for failure to prosecute his claim.

DEMONSTRATE THAT A CASE OR CONTROVERSY EXISTS BETWEEN THE
PLAINTIFF AND THE DEFENDANT WHICH PLAINTIFF HAS A LEGAL RIGHT TO
PURSUE AND OVER WHICH THIS COURT HAS JURISDICITON. IF PLAINTIFF
INTENDS TO ALLEGE THAT DEFENDANT VIOLATED A LAW, HE MUST
SPECIFICALLY REFER TO THAT LAW.

IT IS SO ORDERED.

Dated: January 19, 2023



Thomas J. McAvoy
Senior, U.S. District Judge